

and Order.<sup>651</sup> A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>652</sup> A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>653</sup> The SBA has approved these small business size standards.<sup>654</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.<sup>655</sup> Three of these claimed status as a small or very small entity and won 311 licenses. A fourth auction commenced on September 24, 2003 and closed on September 29, 2003. Here, four bidders won 48 licenses. Four of these claimed status as a very small entity and won 48 licenses.<sup>656</sup> Finally, a fifth auction commenced on September 24, 2003 and closed on September 25, 2003. Here, one bidder won five licenses.<sup>657</sup> That bidder claimed status as a very small entity.

**Specialized Mobile Radio (SMR).** The Commission awards “small entity” bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>658</sup> The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>659</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>660</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area

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<sup>651</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

<sup>652</sup> *Id.*

<sup>653</sup> *Id.*

<sup>654</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>655</sup> See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>656</sup> See “Narrowband PCS Spectrum Auction Closes,” *Public Notice*, 18 FCC Rcd 19751 (WTB 2003).

<sup>657</sup> See “Regional Narrowband PCS Spectrum Auction Closes,” *Public Notice*, 18 FCC Rcd 19689 (WTB 2003).

<sup>658</sup> 47 C.F.R. § 90.814(b)(1).

<sup>659</sup> *Id.*

<sup>660</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN  
APPROVING IN PART, DISSENTING IN PART**

*Re: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; WT Docket No. 02-381*

I believe that wireless solutions are essential for rural America. Since I have been at the FCC, I have heard from wireless ISPs and mobile wireless companies who are doing their best to provide the latest technologies to all Americans, no matter where they live. So I take very seriously their suggestions about how the FCC can push rural wireless deployment. I also am mindful of our obligations to ensure that consumers of wireless services in rural markets are not left behind. Spectrum is the lifeblood of so many of the new wireless services and innovations that can light up the hardest areas to serve.

With that in mind, I believe that our item today makes some good decisions, but also makes a number of bad ones. While I appreciate the attention to this issue, it is certainly not what I would have drafted to promote rural wireless deployment. Its over-reliance on market mechanisms flies in the face of the very market failures too often experienced in rural areas that our policies should be designed to address. It is far from clear that we really are taking the right steps to truly facilitate deployment of wireless services in rural areas.

In some ways, we get it right. I am pleased that for a number of wireless services, we have increased power levels for base stations located in rural areas. I know that this is an important issue for many operators in rural America, and I am very excited about the potential for this change in our rules to improve the reach of mobile wireless services.

I also support our decision to adopt a new "rural safe harbor" for our substantial service requirement. While the substantial service construction requirement may not be a perfect approach to ensuring that spectrum is put to use, I think the rural safe harbor will enable licensees to pursue rural build out strategies with the comfort of knowing what they need to do to satisfy our construction rules.

I am a supporter of secondary markets. But I would have preferred that we more aggressively embraced the complimentary role of market-based mechanisms and re-licensing approaches such as "keep what you use" in this item. I think we passed up here a real opportunity to tackle a number of significant barriers to spectrum access. I do, however, appreciate the item's conclusion that re-licensing and market-based mechanisms aren't necessarily mutually exclusive and that the two approaches can be complimentary in certain circumstances. I also appreciate the cooperation of my colleagues in adopting a Further Notice that continues to explore possible re-licensing approaches and construction obligations for current and future licensees who hold licenses beyond their first term. I think this will be an important dialogue, and I will continue to push for an approach that provides for re-licensing in the event that market-based mechanisms still result in unused spectrum. We cannot afford to let spectrum lay fallow in rural areas. It is not fair to Rural Americans for companies to buy large swaths of spectrum that cover their homes only to ignore them and build out exclusively in urban areas. If they do not plan to use the spectrum they acquired in rural areas, they should let someone else use it to serve rural consumers.

I recognize that there was support by a number of smaller carriers for a Commission determination to adopt RSA/MSAs for all future licensing. However, I believe that the Commission must retain flexibility in addressing license area sizes on a band by band basis. I want to make a personal commitment, though, to doing what I can to make sure we have a balanced approach in licensing that provides for small and

were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

**Fixed Microwave Services.** Fixed microwave services include common carrier,<sup>666</sup> private-operational fixed,<sup>667</sup> and broadcast auxiliary radio services.<sup>668</sup> Currently, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies – that is, an entity with no more than 1,500 persons.<sup>669</sup> The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

**Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>670</sup> The SBA has approved these definitions.<sup>671</sup> The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An

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<sup>666</sup> 47 C.F.R. §§ 101 *et seq.* (formerly, part 21 of the Commission's Rules).

<sup>667</sup> Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See generally* 47 C.F.R. parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>668</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>669</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>670</sup> Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

<sup>671</sup> *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
APPROVING IN PART, DISSENTING IN PART**

*RE: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services; 2000 Biennial Review Spectrum Aggregation Limits for Commercial Mobile Radio Services; and Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation.*

When I asked for this proceeding to be initiated a number of years ago, my hope was that the Commission could find a way to improve our efforts to promote wireless service in rural areas. Anyone who lives in rural America knows first hand that rural consumers have fewer choices of carriers, more holes in their coverage, and that there are still areas of our country that have no service at all. I hoped that this proceeding would begin a serious process of establishing a real strategy at the Commission for how to bring the power of wireless communications more fully to rural Americans. But I believe we come up short today.

There are things I support in this Order. On the positive side, we begin the process of giving carriers the authority to increase power in rural areas where interference will not be a problem. This will reduce the costs of serving these areas, and it's a good step that I applaud. We also state that we will continue our practice of deciding on the size of auctioned areas on a case-by-case basis, rather than auctioning everything on a nationwide basis. Having a mix of large and small areas is also good for rural America. I hope that these efforts will help rural consumers, but by themselves they are not going to get the job done.

So what is the FCC's plan to bring better service to rural America? First, we eliminate the rule that prohibits cellular carriers from merging. No rule will henceforth prevent carriers from merging even when there are only two competitors in the market and the merger would result in a monopoly for rural consumers. Last year we tentatively concluded that the cellular cross interest rule should remain in place where there are three or fewer competitors in a market. But the majority rejects this tentative conclusion, and eliminates the rule that protects the most vulnerable consumers. Instead we'll rely on unpredictable case-by-case review unguided by any written Commission standards at all. Unfortunately, that's the first part of the FCC's new plan to help rural wireless consumers.

Second, the FCC will maintain the rule that allows companies to meet their build out requirements by serving only urban markets and ignoring rural customers. Rural carriers have asked to improve the situation with a "use-it-or-lose-it" rule, where if a carrier fails to use its rural spectrum it is returned to the Commission after a period of years to be re-auctioned to someone who will use it. Sounds like a reasonable way to meet our obligations to rural America and to ensure that public spectrum is put to its highest and best use. But today the Commission refuses this request. Instead we push off use-it-or-lose-it into another interminable NPRM, and give national carriers the option, but no requirement, to meet existing rules by serving a percentage of rural counties instead of the cities in each market. How many carriers do you think will chose to build out rural areas ahead of lucrative cities without further incentive or rules under this new plan? Not many. Nonetheless, rejecting use-it-or-lose-it is the second part of the FCC's curious plan for rural America.

Third, we allow, for the first time, corporations to mortgage their spectrum licenses, essentially allowing them to use a public asset as collateral when seeking loans. I don't see how we can allow this

no more than \$2 million in annual profits each year for the previous two years.<sup>679</sup> In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.<sup>680</sup> A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.<sup>681</sup> The SBA has approved of these definitions.<sup>682</sup> At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this FRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

**Location and Monitoring Service (LMS).** Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>683</sup> A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.<sup>684</sup> These definitions have been approved by the SBA.<sup>685</sup> An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

**Rural Radiotelephone Service.** We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>686</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

<sup>679</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

<sup>680</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

<sup>681</sup> *Id.*

<sup>682</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>683</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 ¶ 20 (1998); *see also* 47 C.F.R. § 90.1103.

<sup>684</sup> *Id.*; *see also* 47 C.F.R. § 90.1103.

<sup>685</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

<sup>686</sup> 13 C.F.R. § 121.201, NAICS code 517212.

**STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (WT Docket No. 02-38); et al., Report and Order and Further Notice of Proposed Rulemaking.*

Encouraging increased development and deployment of spectrum-based services to rural areas is vital to achieve the Commission's dual objectives of promoting increased facilities-based competition and providing ubiquitous, affordable broadband services to all Americans. Today's Agenda Meeting focuses on providing carriers sufficient incentives, financing opportunities, and access to spectrum to deploy inexpensive wireless services in rural areas.

I remain committed to facilitating wireless services to rural areas thereby enabling Americans, regardless of where they travel, reside, or conduct business, to communicate effectively. The importance of this objective becomes clear when one realizes that of the 3,200 counties in America, approximately 72 percent are rural and that 21 percent of all Americans reside in these rural counties. These Americans are entitled to the same benefits and choices as those residing in urban or populated areas. In recent visits to Tennessee and South Dakota, I saw first hand the transformative power that broadband communications access can have in rural America. Economic development, education, and health care can benefit when our rural communities get connected.

Today's Order adopts initiatives and policies aimed directly at facilitating access to capital and lowering regulatory and market barriers to spectrum and infrastructure in rural areas. Giving rural licensees the option of granting the Department of Agriculture's Rural Utilities Service a conditional security interest in their spectrum licenses will greatly enhance the licensees' financing opportunities. By eliminating the absolute bar against rural cellular cross-interests and transitioning to a case-by-case review of rural license transfers, the Commission can more effectively guard against anticompetitive transactions without prohibiting transactions that are in the public interest. This Order also relaxes build-out and emissions requirements for rural carriers, which will increase the flexibility of licensees to tailor spectrum-based services to the needs of their customers located in sparsely populated areas.

In an increasingly mobile world, Americans demand seamless and reliable wireless services. Through the adoption of this Order and our complementary actions in the *Secondary Markets* and *Unlicensed Devices* proceedings, we are bolstering this objective by enhancing licensees financing opportunities, streamlining secondary market transactions, and encouraging increased competition to advance the interests of rural America.

Other Wireless Telecommunications” definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.<sup>693</sup> The Commission’s licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

**Incumbent 24 GHz Licensees.** The rules that we adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for “Cellular and Other Wireless Telecommunications.” This definition provides that a small entity is any entity employing no more than 1,500 persons.<sup>694</sup> The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone (now Wireless) firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.<sup>695</sup> This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band: Teligent<sup>696</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

**Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, we have defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.<sup>697</sup> “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>698</sup> The SBA has approved these definitions.<sup>699</sup> The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

**700 MHz Guard Band Licenses.** In the 700 MHz Guard Band Order, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility

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<sup>693</sup> See 13 C.F.R. § 121.201, NAICS code 517212.

<sup>694</sup> See *id.*

<sup>695</sup> 1992 Census, Series UC-92-S-1 at Firm Size 1-123.

<sup>696</sup> Teligent acquired the Digital Electronic Message Service (DEMS) licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

<sup>697</sup> Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967 ¶ 77 (2000) (24 GHz Report and Order); see also 47 C.F.R. § 101.538(a)(2).

<sup>698</sup> 24 GHz Report and Order, 15 FCC Rcd at 16967 ¶ 77; see also 47 C.F.R. § 101.538(a)(1).

<sup>699</sup> See Letter to Margaret Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

**APPENDIX D****LIST OF COMMENTING PARTIES  
WT DOCKET NOS. 03-202, 02-381, 01-14****COMMENTS**

AT&T Wireless Services, Inc. (AT&T Wireless)  
Blanchard, Lewis  
Blooston Law Firm (Blooston)  
Cellular Telecommunications and Internet Association (CTIA)  
Cingular Wireless LLC (Cingular)  
Connell, Dan  
Council Tree Communications, Inc. (Council Tree)  
Dobson Communications Corporation (Dobson)  
Fiene, Curtis L.  
Histed, Edward  
Holbrook, D.  
Itron, Inc. (Itron)  
Klang, Kirsten  
MDS America, Incorporated (MDS America)  
Millry Corporation (Millry)  
National Rural Telecommunications Cooperative (NRTC)  
National Telecommunications Cooperative Association (NTCA)  
Nextel Partners, Inc. (Nextel Partners)  
NTCH, Inc. (NTCH)  
Organization for the Promotion and Advancement of Small Telecommunications Companies/Rural  
Telecommunications Group (OPASTCO/RTG)  
Ploof, Randall  
Rizzo, Ronald  
Rural Cellular Association (RCA)  
Schultz, Michael  
Southern Communications Services, Inc. D/B/A Southern LINC (Southern LINC)  
Thesen, Colleen  
United States Cellular Corporation (USCC)  
UTStarcom, Inc. (UTStarcom)  
Watson, James  
Wireless Communications Association International, Inc. (WCAI)

**REPLY COMMENTS**

American Mobile Telecommunications Association, Inc. (AMTA)  
Arctic Slope Telephone Association Cooperative, Inc. (Arctic Slope)  
AT&T Wireless Services, Inc. (AT&T Wireless)  
Blooston Law Firm (Blooston)  
DIRECTV, Inc. (DIRECTV)  
Ericsson, Inc. (Ericsson)  
Gleaton, Bill  
Hughes Network Systems, Inc. (Hughes)  
Industrial Telecommunications Association, Inc. (ITA)



thereof, for small entities.<sup>706</sup>

As stated, this *Further Notice* seeks detailed comment on additional measures that the Commission can take in order to promote the further deployment of wireless services to rural and underserved areas. As a general matter, it is reasonable to conclude that targeted programs designed to encourage deployment of services in high cost or hard-to-serve rural areas could impose additional regulatory requirements on a substantial number of carriers, including small entities. Overall, however, the Commission believes that by creating further opportunities for carriers to serve rural areas, small entities could see a significant positive economic impact as a result of a new ability to deploy their services in smaller, rural areas to which their business plans may be better suited. A more specific discussion of the impact to small entities is detailed below.

In this *Further Notice*, the Commission seeks additional comment on the effectiveness of its current partitioning, disaggregation, and secondary markets spectrum leasing rules in the deployment of wireless service to rural areas. Specifically, the Commission seeks to develop a better understanding of the ways in which these rules may be insufficient to promote access to spectrum for all carriers, including small entities. For example, the Commission seeks comment on an alternative proposal initially suggested by a previous commenter, which would modify the current rules to provide bidding credits for auction winners that commit to partitioning portions of their licenses to rural carriers. This plan could impact all rural carriers, including small entities, by giving them greater access to spectrum. In addition, the Commission also requests comment on an alternative approach to the current spectrum leasing rules that would require carriers to take affirmative steps to enter into spectrum leasing arrangements, such as requiring them to report leasing requests made to them and the reasons the requests did not result in a lease. An alternative such as this could impact small entities by enabling them to enter smaller spectrum leasing arrangements for which they may be better suited.

The *Further Notice* also seeks comment on the potential use of "keep what you use" relicensing mechanisms as well as renewal term substantial service requirements in order to further encourage the provisioning of wireless service to rural areas. However, the Commission also seeks comment on the alternative raised by commenters that a "keep what you use" approach could potentially impede the efforts taken by the Commission with the secondary markets rules. In addition, the *Further Notice* requests comment on an alternative approach that would adopt a substantial service construction requirement for licenses that are beyond their initial terms. In this respect, the Commission asks whether such measures would promote access to spectrum in sparsely populated areas and thereby ease the way for carriers, including small entities, to serve rural and underserved areas.

**F. Federal Rules that May Duplicate, Overlap or Conflict with the Proposed Rules.**

None.

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<sup>706</sup> 5 U.S.C. § 603 (c)(1)-(4).

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Cingular Wireless LLC (Cingular)  
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Council Tree Communications, Inc. (Council Tree)  
Dobson Communications Corporation (Dobson)  
Fiene, Curtis L.  
Histed, Edward  
Holbrook, D.  
Itron, Inc. (Itron)  
Klang, Kirsten  
MDS America, Incorporated (MDS America)  
Millry Corporation (Millry)  
National Rural Telecommunications Cooperative (NRTC)  
National Telecommunications Cooperative Association (NTCA)  
Nextel Partners, Inc. (Nextel Partners)  
NTCH, Inc. (NTCH)  
Organization for the Promotion and Advancement of Small Telecommunications Companies/Rural  
Telecommunications Group (OPASTCO/RTG)  
Ploof, Randall  
Rizzo, Ronald  
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Industrial Telecommunications Association, Inc. (ITA)

Other Wireless Telecommunications” definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.<sup>693</sup> The Commission’s licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

**Incumbent 24 GHz Licensees.** The rules that we adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for “Cellular and Other Wireless Telecommunications.” This definition provides that a small entity is any entity employing no more than 1,500 persons.<sup>694</sup> The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone (now Wireless) firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.<sup>695</sup> This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band: Teligent<sup>696</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

**Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, we have defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.<sup>697</sup> “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>698</sup> The SBA has approved these definitions.<sup>699</sup> The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

**700 MHz Guard Band Licenses.** In the 700 MHz Guard Band Order, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility

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<sup>693</sup> See 13 C.F.R. § 121.201, NAICS code 517212.

<sup>694</sup> See *id.*

<sup>695</sup> 1992 Census, Series UC-92-S-1 at Firm Size 1-123.

<sup>696</sup> Teligent acquired the Digital Electronic Message Service (DEMS) licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

<sup>697</sup> Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967 ¶ 77 (2000) (24 GHz Report and Order); see also 47 C.F.R. § 101.538(a)(2).

<sup>698</sup> 24 GHz Report and Order, 15 FCC Rcd at 16967 ¶ 77; see also 47 C.F.R. § 101.538(a)(1).

<sup>699</sup> See Letter to Margaret Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

**STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (WT Docket No. 02-38); et al., Report and Order and Further Notice of Proposed Rulemaking.*

Encouraging increased development and deployment of spectrum-based services to rural areas is vital to achieve the Commission's dual objectives of promoting increased facilities-based competition and providing ubiquitous, affordable broadband services to all Americans. Today's Agenda Meeting focuses on providing carriers sufficient incentives, financing opportunities, and access to spectrum to deploy inexpensive wireless services in rural areas.

I remain committed to facilitating wireless services to rural areas thereby enabling Americans, regardless of where they travel, reside, or conduct business, to communicate effectively. The importance of this objective becomes clear when one realizes that of the 3,200 counties in America, approximately 72 percent are rural and that 21 percent of all Americans reside in these rural counties. These Americans are entitled to the same benefits and choices as those residing in urban or populated areas. In recent visits to Tennessee and South Dakota, I saw first hand the transformative power that broadband communications access can have in rural America. Economic development, education, and health care can benefit when our rural communities get connected.

Today's Order adopts initiatives and policies aimed directly at facilitating access to capital and lowering regulatory and market barriers to spectrum and infrastructure in rural areas. Giving rural licensees the option of granting the Department of Agriculture's Rural Utilities Service a conditional security interest in their spectrum licenses will greatly enhance the licensees' financing opportunities. By eliminating the absolute bar against rural cellular cross-interests and transitioning to a case-by-case review of rural license transfers, the Commission can more effectively guard against anticompetitive transactions without prohibiting transactions that are in the public interest. This Order also relaxes build-out and emissions requirements for rural carriers, which will increase the flexibility of licensees to tailor spectrum-based services to the needs of their customers located in sparsely populated areas.

In an increasingly mobile world, Americans demand seamless and reliable wireless services. Through the adoption of this Order and our complementary actions in the *Secondary Markets* and *Unlicensed Devices* proceedings, we are bolstering this objective by enhancing licensees financing opportunities, streamlining secondary market transactions, and encouraging increased competition to advance the interests of rural America.

no more than \$2 million in annual profits each year for the previous two years.<sup>679</sup> In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.<sup>680</sup> A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.<sup>681</sup> The SBA has approved of these definitions.<sup>682</sup> At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this FRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

**Location and Monitoring Service (LMS).** Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>683</sup> A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.<sup>684</sup> These definitions have been approved by the SBA.<sup>685</sup> An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

**Rural Radiotelephone Service.** We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>686</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

<sup>679</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

<sup>680</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

<sup>681</sup> *Id.*

<sup>682</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>683</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 ¶ 20 (1998); see also 47 C.F.R. § 90.1103.

<sup>684</sup> *Id.*; see also 47 C.F.R. § 90.1103.

<sup>685</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

<sup>686</sup> 13 C.F.R. § 121.201, NAICS code 517212.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
APPROVING IN PART, DISSENTING IN PART**

*RE: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services; 2000 Biennial Review Spectrum Aggregation Limits for Commercial Mobile Radio Services; and Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation.*

When I asked for this proceeding to be initiated a number of years ago, my hope was that the Commission could find a way to improve our efforts to promote wireless service in rural areas. Anyone who lives in rural America knows first hand that rural consumers have fewer choices of carriers, more holes in their coverage, and that there are still areas of our country that have no service at all. I hoped that this proceeding would begin a serious process of establishing a real strategy at the Commission for how to bring the power of wireless communications more fully to rural Americans. But I believe we come up short today.

There are things I support in this Order. On the positive side, we begin the process of giving carriers the authority to increase power in rural areas where interference will not be a problem. This will reduce the costs of serving these areas, and it's a good step that I applaud. We also state that we will continue our practice of deciding on the size of auctioned areas on a case-by-case basis, rather than auctioning everything on a nationwide basis. Having a mix of large and small areas is also good for rural America. I hope that these efforts will help rural consumers, but by themselves they are not going to get the job done.

So what is the FCC's plan to bring better service to rural America? First, we eliminate the rule that prohibits cellular carriers from merging. No rule will henceforth prevent carriers from merging even when there are only two competitors in the market and the merger would result in a monopoly for rural consumers. Last year we tentatively concluded that the cellular cross interest rule should remain in place where there are three or fewer competitors in a market. But the majority rejects this tentative conclusion, and eliminates the rule that protects the most vulnerable consumers. Instead we'll rely on unpredictable case-by-case review unguided by any written Commission standards at all. Unfortunately, that's the first part of the FCC's new plan to help rural wireless consumers.

Second, the FCC will maintain the rule that allows companies to meet their build out requirements by serving only urban markets and ignoring rural customers. Rural carriers have asked to improve the situation with a "use-it-or-lose-it" rule, where if a carrier fails to use its rural spectrum it is returned to the Commission after a period of years to be re-auctioned to someone who will use it. Sounds like a reasonable way to meet our obligations to rural America and to ensure that public spectrum is put to its highest and best use. But today the Commission refuses this request. Instead we push off use-it-or-lose-it into another interminable NPRM, and give national carriers the option, but no requirement, to meet existing rules by serving a percentage of rural counties instead of the cities in each market. How many carriers do you think will chose to build out rural areas ahead of lucrative cities without further incentive or rules under this new plan? Not many. Nonetheless, rejecting use-it-or-lose-it is the second part of the FCC's curious plan for rural America.

Third, we allow, for the first time, corporations to mortgage their spectrum licenses, essentially allowing them to use a public asset as collateral when seeking loans. I don't see how we can allow this

were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

**Fixed Microwave Services.** Fixed microwave services include common carrier,<sup>666</sup> private-operational fixed,<sup>667</sup> and broadcast auxiliary radio services.<sup>668</sup> Currently, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies – that is, an entity with no more than 1,500 persons.<sup>669</sup> The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

**Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>670</sup> The SBA has approved these definitions.<sup>671</sup> The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An

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<sup>666</sup> 47 C.F.R. §§ 101 *et seq.* (formerly, part 21 of the Commission's Rules).

<sup>667</sup> Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See generally* 47 C.F.R. parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>668</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>669</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>670</sup> Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

<sup>671</sup> *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.



**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN  
APPROVING IN PART, DISSENTING IN PART**

*Re: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; WT Docket No. 02-381*

I believe that wireless solutions are essential for rural America. Since I have been at the FCC, I have heard from wireless ISPs and mobile wireless companies who are doing their best to provide the latest technologies to all Americans, no matter where they live. So I take very seriously their suggestions about how the FCC can push rural wireless deployment. I also am mindful of our obligations to ensure that consumers of wireless services in rural markets are not left behind. Spectrum is the lifeblood of so many of the new wireless services and innovations that can light up the hardest areas to serve.

With that in mind, I believe that our item today makes some good decisions, but also makes a number of bad ones. While I appreciate the attention to this issue, it is certainly not what I would have drafted to promote rural wireless deployment. Its over-reliance on market mechanisms flies in the face of the very market failures too often experienced in rural areas that our policies should be designed to address. It is far from clear that we really are taking the right steps to truly facilitate deployment of wireless services in rural areas.

In some ways, we get it right. I am pleased that for a number of wireless services, we have increased power levels for base stations located in rural areas. I know that this is an important issue for many operators in rural America, and I am very excited about the potential for this change in our rules to improve the reach of mobile wireless services.

I also support our decision to adopt a new "rural safe harbor" for our substantial service requirement. While the substantial service construction requirement may not be a perfect approach to ensuring that spectrum is put to use, I think the rural safe harbor will enable licensees to pursue rural build out strategies with the comfort of knowing what they need to do to satisfy our construction rules.

I am a supporter of secondary markets. But I would have preferred that we more aggressively embraced the complimentary role of market-based mechanisms and re-licensing approaches such as "keep what you use" in this item. I think we passed up here a real opportunity to tackle a number of significant barriers to spectrum access. I do, however, appreciate the item's conclusion that re-licensing and market-based mechanisms aren't necessarily mutually exclusive and that the two approaches can be complimentary in certain circumstances. I also appreciate the cooperation of my colleagues in adopting a Further Notice that continues to explore possible re-licensing approaches and construction obligations for current and future licensees who hold licenses beyond their first term. I think this will be an important dialogue, and I will continue to push for an approach that provides for re-licensing in the event that market-based mechanisms still result in unused spectrum. We cannot afford to let spectrum lay fallow in rural areas. It is not fair to Rural Americans for companies to buy large swaths of spectrum that cover their homes only to ignore them and build out exclusively in urban areas. If they do not plan to use the spectrum they acquired in rural areas, they should let someone else use it to serve rural consumers.

I recognize that there was support by a number of smaller carriers for a Commission determination to adopt RSA/MSAs for all future licensing. However, I believe that the Commission must retain flexibility in addressing license area sizes on a band by band basis. I want to make a personal commitment, though, to doing what I can to make sure we have a balanced approach in licensing that provides for small and

and Order.<sup>651</sup> A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>652</sup> A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>653</sup> The SBA has approved these small business size standards.<sup>654</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.<sup>655</sup> Three of these claimed status as a small or very small entity and won 311 licenses. A fourth auction commenced on September 24, 2003 and closed on September 29, 2003. Here, four bidders won 48 licenses. Four of these claimed status as a very small entity and won 48 licenses.<sup>656</sup> Finally, a fifth auction commenced on September 24, 2003 and closed on September 25, 2003. Here, one bidder won five licenses.<sup>657</sup> That bidder claimed status as a very small entity.

**Specialized Mobile Radio (SMR).** The Commission awards “small entity” bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>658</sup> The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>659</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>660</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area

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<sup>651</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

<sup>652</sup> *Id.*

<sup>653</sup> *Id.*

<sup>654</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>655</sup> See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>656</sup> See “Narrowband PCS Spectrum Auction Closes,” *Public Notice*, 18 FCC Rcd 19751 (WTB 2003).

<sup>657</sup> See “Regional Narrowband PCS Spectrum Auction Closes,” *Public Notice*, 18 FCC Rcd 19689 (WTB 2003).

<sup>658</sup> 47 C.F.R. § 90.814(b)(1).

<sup>659</sup> *Id.*

<sup>660</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.